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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
THE CARBORUNDUM COMPANY,

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB Nos. ~~965~~ 936
965 and 982

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

Nature of Case: Ten \$150 civil penalties for alleged violations
of Section 4.02 of Regulation 1 and/or WAC 18-04-040(1)(b)
and six \$250 civil penalties for alleged violations
of Section 5.03 of Regulation 2.

Formal Hearing: March 11, 1976.

Board Members Present: Chris Smith, Chairman, W. A. Gissberg
and Walt Woodward.

Presiding Officer: David Akana, hearing examiner.

Court Reporter: Eugene E. Barker.

For Appellant: Robert M. Schaefer, of Blair, Schaefer, Hutchison,

Wynne, Potter and Horton, attorneys.

For Respondent: James D. Ladley, of Boettcher, LaLonde, Kleweno,
Lodge, Ladley, Witteman, Schreiber and Kelly, attorneys.

FINDINGS OF FACT

1. Pursuant to RCW 43.21B.260, respondent's Regulations 1 and 2 are noticed. Section 2.10 of Regulation 1 and Section 2.04 of Regulation 2 provide for a civil penalty of up to \$250 per day for the violation of each regulation.

2. The material facts in these matters are not in dispute. Appellant admits that it caused the emission of an air contaminant which violated Section 4.02 of Regulation 1 and/or WAC 18-04-040(1)(b) on the following days: September 22, October 10, 15, 30; November 5, 26, and December 2, 29 of 1975; January 26 and February 23 of 1976. For each of these violations, appellant was assessed a \$150 civil penalty which it appealed to this Board on jurisdictional grounds.

3. Appellant admits that it caused the emission of an odorous gas which violated Section 5.03 of Regulation 2 on the following days: September 5, 8, 9, 11, 22, and 24 of 1975. For each of these violations, appellant was assessed a \$250 civil penalty which it appealed to this Board on jurisdictional grounds.

4. There being no evidence to the contrary, the penalties assessed are found reasonable in amount.

CONCLUSIONS OF LAW

1. Appellant and respondent stipulated that, because of this Board's Order in PCHB No. 189, the violations here at issue were not of Regulation 1. Beyond that, the positions of the parties depart.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Respondent contends that the more stringent opacity standards of
2 WAC 18-04-040(1)(b) supersede Regulation 1, and therefore, civil
3 penalties may be assessed for violations of the WAC provision.
4 Respondent further contends that Regulation 2 was not covered by
5 this Board's Order in PCHB No. 189. Appellant, on the other hand,
6 contends that both Regulation 1 and 2 were covered by the Board's
7 Order and, therefore, that no civil penalty should have been issued.

8 We feel it necessary to clarify the meaning of our prior Order
9 in PCHB No. 189. We retained jurisdiction for the sole purpose of
10 giving the parties a forum for the immediate resolution of disputes arising
11 from paragraph 4 of our Order, i.e., the sampling program. It was never
12 intended that we deprive Southwest Air Pollution Control Authority (SWAPCA)
13 of its ability to enforce the law. Insofar as our previous decision can
14 be interpreted as limiting SWAPCA's jurisdiction to enforce the law,
15 we now modify it to retain jurisdiction only as to paragraph 4 of
16 the Order.

17 2. Opacity violations: Appellant unlawfully caused or allowed
18 to be emitted into the atmosphere an air contaminant of such opacity
19 as would exceed the emission standards of Section 4.02 of Regulation 1
20 and/or WAC 18-04-040(1)(b). Because both parties have been laboring
21 under a misinterpretation of our Order, the assessment of the ten
22 civil penalties for the violations should be affirmed but payment
23 thereof suspended on condition that appellant use its best efforts to
24 secure a consent order providing for a solution to the emission problem
25 from SWAPCA, or failing that, apply for a variance.

26 3. Odor violations: Appellant unlawfully caused or allowed to be
27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER 3

1 emitted into the atmosphere an odorous gas in such concentration as
2 would exceed the limitation of Section 5.03 of Regulation 2. The six
3 civil penalties assessed for the violations should be affirmed.

4 ORDER

5 1. The assessment of the ten civil penalties of \$150 each
6 should be, and the same is hereby affirmed PROVIDED however, that payment
7 thereof is suspended and no payment shall be due upon condition that
8 appellant secure a consent order providing for a solution to the emission
9 problem from SWAPCA within 90 days from the date of this Final Order, or
10 failing that, apply for a variance 30 days thereafter.

11 2. The assessment of the six civil penalties of \$250 each should
12 be, and the same is hereby affirmed.

13 DATED this 27th day of April, 1976.

14 POLLUTION CONTROL HEARINGS BOARD

15 Chris Smith
16 CHRIS SMITH, Chairman

17 W. A. Gissberg
18 W. A. GISSBERG, Member

19 Walt Woodward
20 WALT WOODWARD, Member

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27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER